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JAN 2 1974
MICHAEL RODAK, JR., CLERK

SINGLE APPENDIX

IN THE

Supreme Court of the United States

October Term, 1973
No. 73-235

MARCO DE FUNIS and BETTY DE FUNIS, his wife;
MARCO DE FUNIS, JR. and LUCIA DE FUNIS, his wife;
Plaintiffs-Petitioners,

v.

CHARLES ODEGAARD, President of the University of Washington; RICHARD L. RODDIS, Dean of the University of Washington Law School; RICHARD KUMMERT, ROBERT T. HUNT and RICHARD L. RODDIS, Admissions Committee of the University of Washington Law School; HAROLD S. SHEFELMAN, JAMES R. ELLIS, R. MORT FRAYN, ROBERT L. FLENNAUGH, JACK G. NEWPERT, ROBERT F. PHILIP and GEORGE B. POWELL, Regents of the University of Washington; and HAROLD GARDINER, Registrar of the University of Washington,
Defendants-Respondents.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF
THE STATE OF WASHINGTON

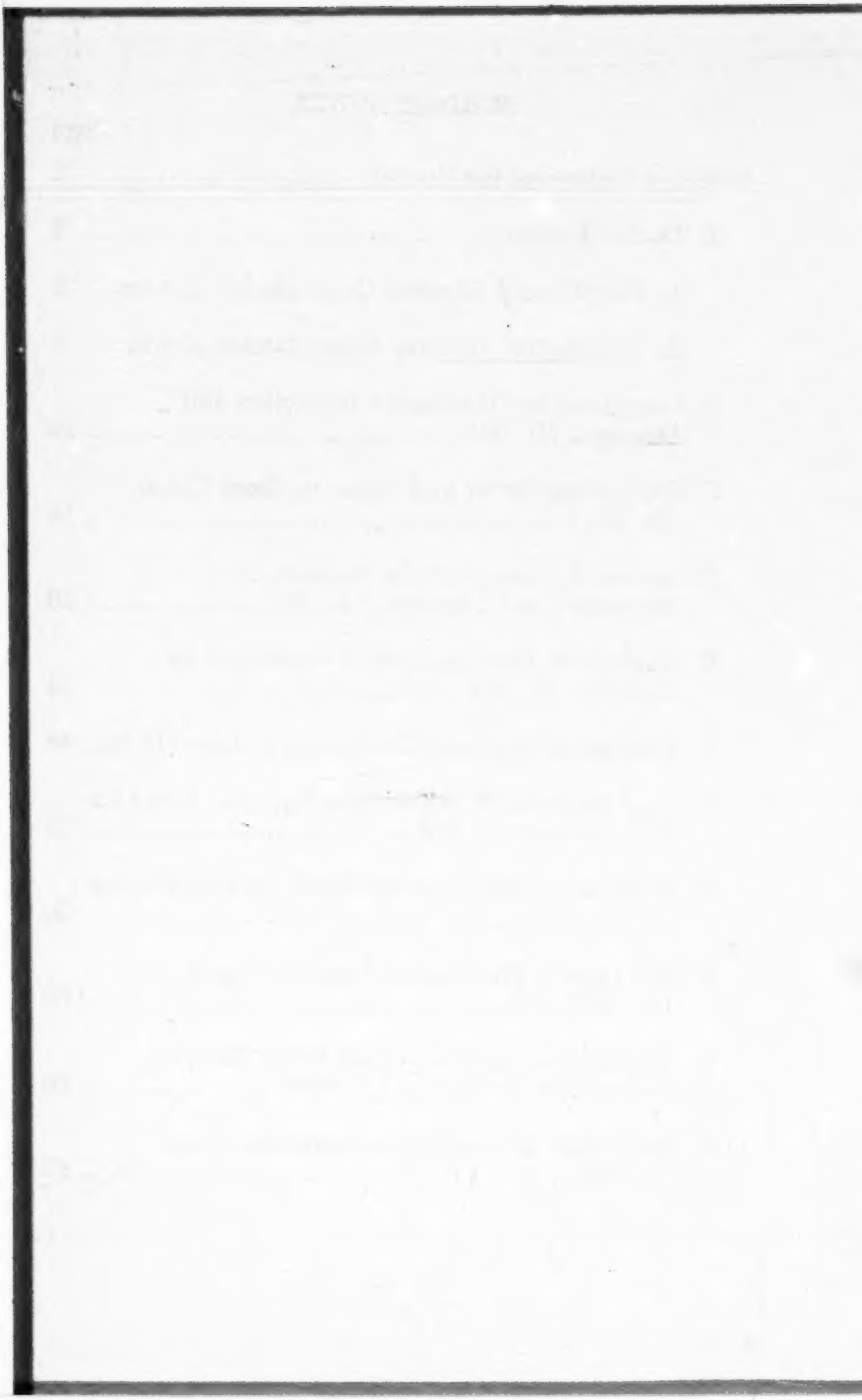
PETITION FOR CERTIORARI FILED AUGUST 3, 1973
CERTIORARI GRANTED NOVEMBER 19, 1973

CRAFTSMAN & METPRESS SEATTLE, WASHINGTON



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SINGLE APPENDIX

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RELEVANT PORTIONS OF THE RECORD

A. DOCKET ENTRIES

1. KING COUNTY SUPERIOR COURT DOCKET ENTRIES

MARCO DE FUNIS and BETTY DE FUNIS, his wife; MARCO DE FUNIS, JR. and LUCIA DE FUNIS, his wife,

Plaintiffs,

v.

CHARLES ODEGAARD, President of the University of Washington; RICHARD L. RODDIS, Dean of the University of Washington Law School; RICHARD KUMMERT, ROBERT T. HUNT and RICHARD L. RODDIS, Admissions Committee of the University of Washington Law School; HAROLD S. SHEFELMAN, JAMES R. ELLIS, R. MORT FRAYN, ROBERT L. FLENNAUGH, JACK G. NEWPERT, ROBERT F. PHILIP and GEORGE B. POWELL, Regents of the University of Washington; and HAROLD GARDINER, Registrar of the University of Washington,

Defendants.

No. 741727

CIVIL APPEARANCE DOCKET

1971	
Aug. 19	Summons & Complaint
Aug. 19	Order to show cause August 25
Aug. 23	Motion to Dismiss
Aug. 23	Appearance—all (Slade Gorton, James B. Wilson, John Lackland)
Aug. 25	Affdt of Richard O. Kummert
Aug. 25	Ent'd—Temp. Restraining Order & Order to Show Cause
Aug. 27	Order Setting Case
Aug. 30	Interrogatories to Defendant
Sept. 3	Affidavit of Richard O. Kummert
Sept. 9	Notice to Produce Documents
Sept. 13	Answer for Mandamus, Injunction and Damages

Sept. 13	Answers to Interrogs by Defendants
Sept. 15	Deposition of Richard Roddis—Published
Sept. 22	Plaintiffs Exhibits 2-5; 15-42 Defendants Exhibits 1;6-14;43-46, Received
Sept. 22	Entd hrg: Court Finds for Plaintiff (8) Shorett
Oct. 4	Oral Decision
Oct. 8	Ent'd: Objections to Findings & Conclusions—(8) Shorett Granted in part & Denied in part
Oct. 8	Deft's Proposed Findings of Fact & Conclusions Offered & Refused
Oct. 8	Findings of Fact & Conclusions—Offered & Refused
Oct. 8	Judgment—Offered & Refused
Oct. 13	Order auth. substitution of Xerox copies for certain exhibits
Oct. 18	Findings & Conclusions
Oct. 18	Judgment
Oct. 18	Cost Bill
Oct. 20	Notice of Appeal
Oct. 26	Praecipe for Transcript
Nov. 2	Cost bond on appeal
1972	
Jan. 5	Entd: Transc, statement of facts, Vol I
Jan. 5	Entd: Transc, statement of facts, Vol II
Jan. 7	Statement of Facts—rec'd
Jan. 28	Vols. I, II & III Statement of Facts, settled & Signed. (Shorett)
1973	
May 17	Remittitur
June 7	Certified Copy of Order by Supreme Court

2. WASHINGTON SUPREME COURT DOCKET ENTRIES

Nov. 11, 1971	Transcript
Jan. 7, 1972	Proposed Statement of Facts filed in King County Clerk's Office on January 3, 1972
Jan. 11, 1972	Notation granting Professor Arval A. Morris authority to file an amicus curiae brief on behalf of himself but not on behalf of the AAUP. Professor Morris' brief must be served by the time appellants' brief is filed.
Jan. 12, 1972	Statement of Facts filed in King County Clerk's office on January 3, 1972
Jan. 19, 1972	Notation granting Mr. Jorgen G. Bader authority to file a brief of amicus curiae. Mr. Bader shall have until two weeks after service of appellant's brief in which to file an amicus curiae brief
Jan. 24, 1972	Brief of Amicus Curiae (25) and Service —(Arval A. Morris)
Jan. 27, 1972	Application for Permission to file Brief Amicus Curiae (John Gant)
Jan. 27, 1972	Notation Order granting permission to file brief amicus curiae on condition petitioners coordinate with counsel U of W and other amicus curiae to avoid repetition. (John Gant)
Jan. 27, 1972	Request for permission to exceed the limitation on the number of pages contained in answering brief (Rule I-42(f)), but not to exceed 100 pages. (Lyle L. Iversen)
Jan. 27, 1972	Notation requesting that respondent renew his request after the briefs of appellant and amici have been filed so that an estimate of the number of additional pages desired may be indicated.
Feb. 2, 1972	Application of Philip L. Burton for Permission to file Brief Amicus Curiae.

Feb. 2, 1972	Notation authorizing Mr. Burton to file an amicus curiae brief on the condition that the effective coordination be accomplished with counsel for appellant and insofar as possible with other amici curiae to eliminate tautology and that the brief is filed within two weeks after appellant's opening brief to provide respondent the opportunity to reply to amicus curiae in his answering brief.
Feb. 2, 1972	Application for permission to file Brief Amicus Curiae (Michael Rosen and Sanford Jay Rosen)
Feb. 2, 1972	Notation granting permission to Michael Rosen and Sanford Jay Rosen to file amicus curiae briefs (Michael H. Rosen on the condition that he coordinate with counsel for appellant and insofar as possible with other amici curiae to eliminate repetition in argument. That his brief is filed within two weeks after appellant's opening brief is filed to provide respondent the opportunity to reply in his answering brief.) (Mr. Sanford J. Rosen authority to associate with Mr. Michael H. Rosen in the filing of an amicus curiae brief if the conditions of APR 7 are met.)
Feb. 7, 1972	Notation order granting Michael Rosen permission to file amicus briefs of the ACLU in mimeograph form.
Feb. 10, 1972	Brief of Appellants (25) and Service
Feb. 15, 1972	Petition for Permission to file Brief Amicus Curiae (John Sennhauser)
Feb. 15, 1972	Notation granting permission to John H. Sennhauser to file brief Amicus Curiae on the following conditions: a. That effective coordination be accomplished with counsel for appellant and as far as possible with other amicus curiae to eliminate tautology. b. That the brief

	is filed by March 24, 1972, to provide respondent the opportunity to reply to amicus curiae in his answering brief.
Feb. 1, 1972	Permission requesting authority to file amicus briefs (Young Lawyers Section of the Seattle King County Bar Association)
Feb. 1, 1972	Notation granting permission to file amicus briefs.
Feb. 22, 1972	Amicus Brief (28) and Service (Young Lawyers Section Seattle King County Bar Association)
Feb. 18, 1972	Application for leave to file typewritten and photo-copied brief (John Gant)
Feb. 18, 1972	Notation granting authority to Mr. John Gant to file amicus curiae brief in accordance with ROA I-42(b)
Feb. 22, 1972	Motion for Authority to Appear as Amicus Curiae and to Permit the Appearance of Counsel
Feb. 22, 1972	Notation granting Joseph H. Gordon and Grant Armstrong authority to file an amicus curiae brief provided the brief is served on counsel for respondent by February 24, 1972. Chief Justice has also authorized Kenneth J. Burns, Robert M. O'Neill and Harry Reese (out of state counsel) to associate with Mr. Gordon and Mr. Armstrong on the amicus brief.
Feb. 23, 1972	Brief of Michael H. Rosen and Sanford Jay Rosen as Amici Curiae (25) and Service
Feb. 24, 1972	Brief of Amici Curiae (25) and Service (Joseph H. Gordon, Grant Armstrong) (Kenneth J. Burns, Jr., Robert M. O'Neil and Harry B. Reese—out of state)

Feb. 24, 1972	Brief of Amicus Curiae (26) and Service (Jorgen G. Bader, Assistant Corporation Counsel)
Feb. 24, 1972	Brief of the Mexican American Legal Defense and Education Fund as Amicus Curiae (John Gant and Mario Obledo) (25) and Service
Feb. 24, 1972	Brief of Amicus Curiae (25) and Service (Officers and Trustees of the Seattle King County Bar Association (Jack P. Scholfield, et al.)
Feb. 24, 1972	Request for permission to file a brief amicus curiae by George Constable
Feb. 24, 1972	Notation denying request if brief would be in support of appellant because of the time schedule. If the position of respondent is to be supported authority to file an amicus curiae brief is granted if the brief is filed by March 24, 1972.
Feb. 24, 1972	Brief Amicus Curiae (26) and Service (Sennhauser)
Feb. 24, 1972	Affidavit and Request for Judicial Notice
Feb. 24, 1972	Brief of Amicus Curiae (25) and Service —(Philip L. Burton)
March 1, 1972	Permission to file a brief amicus curiae (Robert Baronsky)
March 1, 1972	Notation granting permission to Robert Baronsky to file an amicus curiae brief on the understanding that Mr. Baronsky will support the position of respondents, and the brief is to be filed by March 24, 1972, to provide the appellants an opportunity to answer the argument of amicus curiae in a reply brief if they so desire.
March 2, 1972	Motion to Strike Briefs Amicus Curiae (9) and Service
March 2, 1972	Notice of Motion

March 2, 1972	Set for consideration on March 17, 1972 (Respondent's Motion to Strike Briefs Amicus Curiae)
March 3, 1972	Motion to strike brief Amicus Curiae of Young Lawyers Section, Seattle-King County Bar Association
March 3, 1972	Notice of Hearing on Motion
March 3, 1972	Set for consideration on March 17, 1972 (Motion to strike amicus curiae brief of Young Lawyers Section, Seattle-King County Bar Association)
March 7, 1972	Brief of Respondents on Motion to strike Amicus Curiae Briefs (10) and Service
March 9, 1972	Motion to strike Amicus Curiae Brief (5) (of Arval A. Morris) and Notice for Motion Docket
March 9, 1972	Affidavit of Service by mail
March 9, 1972	Set for consideration on March 17, 1972 (Motion to strike amicus curiae brief of Arval A. Morris)
March 13, 1972	Memorandum in Opposition to Motion to Strike Amicus Curiae Brief (10) and Service (Assistant Corp. Counsel—The City of Seattle)
March 13, 1972	Response to Respondent's Motion to Strike Brief Amicus Curiae of Young Lawyers' Section, Seattle-King County Bar Association (25)
March 14, 1972	Memorandum in Opposition to Motion to Strike Amicus Curiae Brief of Arval A. Morris (15)
March 15, 1972	Memorandum in Opposition to Motion to Strike Amicus Curiae Brief (10) and Service
March 15, 1972	Brief in Opposition to Motion to Strike Brief Amicus Curiae (10)
March 16, 1972	Responding Memorandum of American Indian Law Students, Inc., et al., on Motion to Strike Amicus Curiae Briefs (6) and service

March 17, 1972	Motion to admit Arval A. Morris for purposes of submitting a Brief Amicus Curiae (5)
March 17, 1972	Notation order denying Respondents' Motions to dismiss briefs Amicus Curiae 13/263
March 17, 1972	Notation order granting Motion to admit Arval A. Morris for purposes of submitting a Brief Amicus Curiae 13/263
March 22, 1972	Stipulation to extend time for serving and filing Respondents' Brief (extended to April 13, 1972)
March 24, 1972	Brief of George Constable, Amicus Curiae (26) and Service (on behalf of respondent)
March 24, 1972	Request for permission to file a brief amicus curiae on behalf of the respondent representing the National Jewish Community Rights Council, Inc. (Jennings P. Felix)
March 24, 1972	Notation order granting permission to Jennings P. Felix to file a brief amicus curiae
March 24, 1972	Brief of amicus curiae (26) and Service (Robert Baronsky)
March 24, 1972	Brief of amicus curiae (26) and Service Jennings P. Felix)
March 30, 1972	Request of Mr. Potts to file brief Amicus Curiae
March 30, 1972	Notation order granting Mr. Potts permission to file amicus brief
March 30, 1972	Brief of amicus curiae (Mr. Ralph B. Potts) (26) and Service
April 6, 1972	Request to file Amicus curiae brief on behalf of defendants (G. Robert Brain)
April 6, 1972	Notation granting permission to file brief of Amicus Curiae to Mr. Brain on the condition it is filed by April 13, 1972.

April 7, 1972	ENTERED—Set for hearing May 15, 1972—En Banc
April 11, 1972	Brief of Respondents (25) and Service
April 11, 1972	Brief of Amici Curiae (G. Robert Brain (15) and Service
April 24, 1972	Statement of Facts (three volumes)
April 24, 1972	Exhibits A-61
May 1, 1972	Reply Brief of Appellants (25)
May 2, 1972	Affidavit of Service by mail
May 2, 1972	Letter of May 1, 1972, requesting permission to file a reply brief two pages over the limit set by the Court's rule (James B. Wilson)
May 3, 1972	Notation Order granting permission to file a brief two pages over the limit
Nov. 24, 1972	Lyle Iversen's letter of November 21, 1972 and Service
March 8, 1973	Opinion—Reversed—En Banc
March 15, 1973	Cost of Bill and Service
April 2, 1973	Petition for Rehearing (12)
May 16, 1973	Order Denying Petition for Rehearing 63/372
May 16, 1973	Remitted 60/395
May 24, 1973	Application for Allowance of Appeal and Stay
May 24, 1973	Notice of Appeal to the Supreme Court of the United States of in the Alternative Notice of Application for Writ of Certiorari
May 25, 1973	Notice of Praecipe for Supplemental Transcript on Appeal to the Supreme Court of the United States and service
May 29, 1973	Notation Order "The position for a stay pending an appeal or disposition of a petition for writ of certiorari addressed to the U.S. Supreme Court is denied. The motion for authority to use original

records filed in the Supreme Court for inclusion in the transcript to be sent to the Supreme Court is granted conditioned on counsel for plaintiffs-appellants, Marco DeFunis assuming the obligation of causing the return of this Court's records upon conclusion of the action by the U.S. Supreme Court."

B. COMPLAINT FOR MANDAMUS, INJUNCTION AND DAMAGES (R. 94)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

(Title Omitted)

Plaintiffs allege:

1. That the plaintiffs, Marco De Funis and Betty De Funis, his wife, are husband and wife and have been residents and taxpayers of Seattle, King County, Washington for more than 50 years. That the plaintiffs, Marco DeFunis, Jr. and Lucia DeFunis, his wife, are husband and wife and are taxpayers and residents of Seattle, King County, Washington for more than 20 years.

2. That the plaintiff Marco De Funis, Jr. is a graduate of the public elementary and high schools located in Seattle, Washington, and was graduated from the University of Washington in 1970 with a Bachelor of Arts degree.

That said plaintiff graduated from Franklin High School in Seattle with close to a straight "A" or 4. grade average; that he graduated from the University of Washington with an overall grade point average of 3.62 out of a possible 4.; his junior-senior year grade average was 3.71 and the grade point average in his major, political science, was 3.85. He was graduated from the University of Washington Phi Beta Kappa (highest scholastic honorary) and Magna Cum Laude.

3. That the defendant Charles Odegaard is president of the University of Washington; that Harold S. Shefelmann and the others named in this complaint are members of the Board of Regents of the University of Washington; that Richard Kummert, Robert S. Hunt and Richard L.

Roddis are members of the Admissions Committee for the admitting of students to the Law School; that Richard L. Roddis is Dean of the Law School. That the defendant University of Washington is a state owned and supported educational institution maintained and paid for by taxpayers of the state of Washington. That Harold Gardiner is the Registrar of the University of Washington and supervises the admission of students to attend classes at the University of Washington Law School.

4. After graduating from the University Magna Cum Laude in 1970, plaintiff Marco De Funis, Jr. attended graduate school at the University of Washington during the year 1970-1971, and his grades during the full year of graduate school were straight "A" or 4.; his marks in many courses being "A+" with comments by the professors that his work was exceptional.

5. Plaintiff Marco DeFunis, Jr., in addition to achieving exteremely high scholastic grades and honors, worked part time in order to continue in the University, working 20 to 40 hours per week during the school year and at the same time engaged in teaching Sunday school.

6. That the plaintiff Marco DeFunis, Jr. is 22 years of age, is married, and has always resided in Seattle, King County, Washington. That the plaintiff Lucia DeFunis, wife of plaintiff Marco DeFunis, Jr., is employed as a dental technician in Bellevue, Washington.

7. That the plaintiff Marco DeFunis, Jr. applied for admission to the University of Washington Law School after graduation from the University of Washington, in the Fall of 1970. He was not accepted, but was placed on the class admissions waiting list, and after waiting until the late

summer months of 1970, said plaintiff was denied admission to the Law School for the Fall term beginning 1970. At that time, said plaintiff was advised that he would have a better chance of attending Law School with class entering in the Fall of 1971. Thereafter, said plaintiff attended graduate school at the University of Washington, where, as alleged, during the 1970-71 school year he received a straight "A" average for the full graduate year.

8. Plaintiff Marco DeFunis, Jr. again applied to the University of Washington Law School for admission in the Fall of 1971. Said plaintiff's admission credentials included, in addition to the high scholarship records achieved as an undergraduate and his one year graduate school record as set forth above, his law school aptitude test score of 668, which said plaintiff is advised is within the top 7% of all law school applicants having taken the test in the past several years.

9. That plaintiff Marco DeFunis, Jr. was again denied admission to the Law School, this time for the class beginning in the Fall of 1971, and was put on the waiting list for a second time. On August 2, 1971, said plaintiff was notified by letter from defendant Robert S. Hunt, Associate Dean and professor of law at the University of Washington Law School, advising him that he had not been selected for the Law School class entering in the Fall of 1971.

10. That of the candidates selected and presently in line for admission to the 1971 Law School class at the University of Washington, are many candidates whose qualifications and credentials are much below the credentials and qualifications of the plaintiff Marco DeFunis, Jr.; that many of the students that the Law School contem-

plates accepting in the class beginning in the Fall of 1971 are not residents and taxpayers of the state of Washington, and their parents are not and never have been residents and taxpayers of the state of Washington. That the plaintiffs are informed and believe that in excess of 25% of those who are accepted by the Law School, and in lieu of the plaintiff Marco DeFunis, Jr., are not taxpayers or residents of the state of Washington. That said plaintiff's credentials and qualifications are higher and better than many others being admitted to the law class by the University of Washington.

11. That the University of Washington Law School is a state institution supported by the taxpayers and residents of the state of Washington; and taxpayers and residents of the state of Washington are entitled to preference for admission to the state University. At other schools at the University of Washington preference is given to taxpayers and residents of the state of Washington. That failure on the part of the defendants to admit said plaintiff to the Law School is unjust discrimination in favor of nonresidents, nontaxpayers, and students who do not have the qualifications and credentials possessed by said plaintiff. There is no question but that said plaintiff is fully qualified, competent, and capable of making a very creditable showing in Law School and successfully completing the Law School course in a satisfactory manner and probably as an honor student.

12. That the plaintiff Marco DeFunis, Jr. has previously made application for admission to Law School at the following universities, to-wit:

University of Oregon

University of Idaho

Gonzaga University
Willamette University

and has been accepted as a student in each of said Law Schools where he has made application. That said plaintiff may attend one of said law schools, which would require his residence away from his home during the school years.

13. The action of the defendants in denying said plaintiff admission to the University of Washington School of Law, class of 1974, in the Fall of 1971, will cause the plaintiffs undue hardship, permanent loss and damages. That said plaintiff and his wife to live out of the state of Washington to attend law school will require him to pay out of state tuition fees, incur substantial additional living costs and expenses during the school years for himself and his wife; cause the loss of his part time employment in the city of Seattle, and cause his wife to lose her position and income as a dental technician; that said monetary loss alone during the school year for the three years of law school, would exceed $7,500 per year, or a total of $22,500. That the plaintiffs are unable to afford the extra cost and expense of the plaintiff Marco DeFunis, Jr. attending law school as a nonresident student in another state.

14. That the said plaintiff, upon completing law school, would practice law in the State of Washington, and for that reason would be further handicapped by attending law school elsewhere; that the action of the defendants may well terminate and forever end the opportunity and ambition of said plaintiff to practice law as his chosen profession. That it would not be possible to measure the loss of earnings and damages that will be sustained by said plaintiff by the wrongful acts of the defendants.

15. That the plaintiffs heretofore requested of the defendants a record of the credentials and qualifications and residence of each of the students (without specifying any names) that the defendants have refused and failed to make such information available to the plaintiffs. That the defendants have indicated that even though the defendant University of Washington is a state supported university, that all of those admitted to the Law School class could be non-residents and nontaxpayers of the state of Washington if the admissions committee so determined, and even though competent, capable and qualified students who are and whose parents are taxpayers and residents of the state of Washington are eligible and desirous of attending the University of Washington and the Law School.

16. That defendants have acted unjustly and without considering the welfare of taxpayers and residents of the state of Washington and those who have supported and paid for the defendant University of Washington over many years in selecting students for admission to the Law School.

17. That the plaintiffs Marco DeFunis and Betty DeFunis, his wife, are justified in requesting and requiring that after having paid for and supported the University of Washington for more than 50 years, that their fully qualified, capable and competent son, who was graduated from the University of Washington Magna Cum Laude and with records and qualifications in excess of at least many of those being admitted to the Law School, be admitted to the University of Washington Law School.

18. That said plaintiff, Marco DeFunis, Jr., was wrongfully passed over for the Law School class beginning in

1970, and after being advised that he should make application for admission in the Fall of 1971, and spending an additional year as a graduate student in the University, making grades of straight "A" and "A+", should not now be denied admission to the Law School.

WHEREFORE, plaintiffs request that the defendants be ordered and directed to admit and enroll the plaintiff Marco DeFunis, Jr., to the defendant University of Washington Law School in the Fall of 1971, and that upon the failure of said defendants to accept and admit said plaintiff as a student to said Law School, that the plaintiffs recover damages in the sum of not less than $50,000, together with their costs and disbursements herein to be taxed as against the defendants and each of them; and that the plaintiffs have such other and further relief that may be just and equitable.

By JOSEF DIAMOND
LYCETTE, DIAMOND & SYLVESTER
Attorneys for Plaintiffs

(Verification omitted)

C. RESTRAINING ORDER AND ORDER TO SHOW CAUSE (R. 92)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

(Title Omitted)

THIS MATTER having come on for hearing before the undersigned, one of the judges of the above entitled court, upon the motion of the plaintiffs for a restraining order and order to show cause to be directed to the defendants; the court having read the complaint of the plaintiffs in support of said motion and being duly advised in the premises, now, therefore, it is hereby

ORDERED, that each of the above named defendants be, and they are hereby restrained from selecting students for admission to the Law School of the University of Washington during the pendency of this action; and it is further

ORDERED, that each of the above named defendants be, and they are hereby directed to be and appear in the courtroom of the Honorable Howard J. Thompson, judge, Room No. E-813, King County Courthouse, Seattle, Washington, on the 25th day of August, 1971, at the hour of 9:30 o'clock A.M., or as soon thereafter as counsel may be heard, then and there to show cause, if any there be, why the restraining order herein should not be made permanent, until the plaintiff herein, MARCO DE FUNIS, JR. is admitted as a student to the law school of the University of Washington.

The plaintiffs shall file a bond as security in the sum of $200.00.

DONE IN OPEN COURT this 19th day of August, 1971.

HOWARD J. THOMPSON
Judge

(Names of presenting and approving counsel omitted)

D. ANSWER TO COMPLAINT FOR MANDAMUS, INJUNCTION AND DAMAGES (R. 55)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

(Title Omitted)

COME NOW the defendants and answering the complaint of the plaintiffs admit, deny and allege as follows:

1. Answering paragraphs 1 and 2 of plaintiffs' complaint, defendants admit that plaintiffs are residents of the State of Washington, and that plaintiff, Marco De Funis, Jr., is a graduate of the University of Washington with a major in Political Science with an overall grade point of 3.62, junior-senior year grade point of 3.71 and that he was inducted into the University of Washington chapter of Phi Beta Kappa and was given Magna Cum Laude honors when he was awarded his baccalaureate degree. In all other respects defendants deny the allegations in paragraphs 1 and 2 thereof.

2. Answering paragraph 3 of plaintiffs' complaint, defendants admit that Charles Odegaard is president of the University, that Harold S. Shefelman, James R. Ellis, R. Mort Frayne, Robert L. Flennaugh, Jack G. Neupert, Robert F. Philip and George V. Powell are Regents of the University of Washington, that Richard L. Roddis is Dean of the Law School, that Richard Kummert and Robert S. Hunt are Professors of the University's Law School and members of the Admissions Committee of the Law School; and that the University of Washington is a state-owned institution of higher education in the State of Washington. In all other respects defendants deny the allegations in paragraph 3 thereof.

3. Answering paragraphs 4, 5 and 6 of plaintiffs' complaint, defendants admit that plaintiff Marco De Funis, Jr. attended classes and was enrolled at the University of Washington during the year 1970-71 taking graduate courses in Political Science for which he was awarded grades of "A". Having insufficient knowledge of the other allegations of said paragraphs to know their truth or falsity, defendants deny the same.

4. Answering paragraphs 7, 8 and 9 of plaintiffs' complaint, defendants admit that said plaintiff Marco De Funis, Jr. applied for admission to the University of Washington Law School for the Fall of 1970 and for the Fall of 1971; that he was placed on a waiting list for admission for the class entering 1970, and again placed on the waiting list for admission for the class entering 1971; that he was denied admission to both such classes; that he was advised by Associate Dean Robert S. Hunt during August of 1971 of his failure to be admitted to the 1971-72 First Year Law Class; and that his score on the third taking of the Law School Admissions Test since August 1969 was 668, which score is the 93rd percentile of scores achieved by persons taking the Law School Admissions Test within the last three years. Except as previously admitted herein, defendant denies each and every other allegation contained in said paragraphs.

5. Answering paragraph 10 of plaintiffs' complaint, defendants admit that some of those applicants admitted to the Law Class commencing the Fall of 1971 are not residents of the State of Washington and that some parents of students admitted are not residents of the State of Washington and deny each and every other allegation therein contained.

6. Defendants admit they refused to provide detailed information requested by plaintiffs on June 8, 1971 and except as heretofore admitted herein, defendants deny each and every other allegation contained in plaintiffs' complaint.

WHEREFORE having fully answered the complaint of the plaintiffs herein, defendants pray that the same be dismissed with prejudice and with costs awarded to the defendants.

DATED THIS 9th day of September, 1971.

SLADE GORTON, Attorney General
State of Washington
By JAMES B. WILSON

E. ANSWERS TO INTERROGATORIES PROPOUNDED BY PLAINTIFFS (R. 35)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

(Title Omitted)

COMES NOW the defendants and answer the Interrogatories heretofore propounded by plaintiffs.

1. List in tabular form below or on separate schedule the candidates admitted to and on the waiting list for admission for the Law School class of 1974 as of August 1, 1971, indicating:

(a) their junior-senior year grade point averages,
(b) their law school admission test scores,
(c) their writing ability scores,
(d) their predicted first year law school averages,
(e) whether the candidate is from out of states,
(f) whether the candidate is from a minority group

which is receiving special consideration for admission to law school,

(g) whether the candidate has been admitted to the University of Washington School of Law for the class of 1974 as of August 30, 1971.

ANSWER: Schedule A attached sets forth for the separate groups of candidates admitted to and on the waiting list for admission for the Law School class of 1974 as of August 1, 1971, the following information as indicated by our records:

(a) A grade point average computed for each such candidate using the grades earned in his junior and senior years. We use the annual grade point averages computed by the Law School Data Assembly Service (a division of Educational Testing Service) for each such candidate in reaching the average for the two years. We assume that the combined average, rather than the individual yearly averages, is therefore sought under plaintiff's interrogatory 1(a).

In making its calculation of a candidate's grade point average, the Law School Data Assembly Service routinely deletes grades in physical education, ROTC, practical music and practical art courses.

The combined averages presented are the result of analysis of those transcripts presented by the Law School Data Assembly Service and forwarded to the Committee on Admissions and Readmissions ("the Committee") up to the time that determination of admission or waiting list status was made by the Committee. In many cases, such transcripts did not cover the applicant's full senior year because the applicant's senior year was only partly

complete by the application deadline of March 15, 1971. We have not revised such grade point averages to reflect later receipt of complete senior year transcripts.

(b) The figure representing the candidate's Law School Admission Test Score component used by the Committee in calculating the candidate's predicted first year average. In the event the candidate had taken the Law School Admission Test on more than one occasion within the last four years, the figure appearing in column (b) is the average of the test scores the candidates received. If the applicant has only taken the test once in the last four years the figure appearing in column (b) is the applicant's test score.

(c) The figure representing the candidate's Writing Test Score component used by the Committee in calculating the candidate's predicted first year average. In the event the candidate had taken the Law School Writing Test on more than one occasion within the last four years, the figure appearing in colum (c) is the average of the test scores the candidate received. If the applicant has only taken the Writing Test once in the last four years the figure appearing in column (c) is the applicant's test score.

(d) The candidate's predicted first year law school average. This average is the sum of 51.3, 3.4751 times the combined junior-senior grade point average, .0159 times the figure representing the Law School Admission Test Score component, and .0456 times the figure representing the Writing Test Score component.

(e) We have assumed that the question "whether the candidate is from out of state" implies domicile issues of

the type presented in interrogatory 2 rather than a determination as to whether the applicant at the time the application was filed happened to be out of state. We have insufficient information from which to determine any applicant's domicile. We do maintain records of applicants' state of permanent mailing address and have used this as the best approximation we can produce of the applicants' domicile. Where the applicant's permanent mailing address is outside the State of Washington, colume (e) below will show "yes."

(f) Where the candidate is a member of a minority group which is receiving special consideration for admission to law school, column (f) below will show "yes."

(g) If the candidate has been admitted to the University of Washington School of Law for the class of 1974 as of August 30, 1971, column (g) below will show "yes."

2. The total number of applicants for admission and students admitted to the law school class of 1974 who are, and whose parents are not residents, nor taxpayers of the state of Washington.

ANSWER: We are uncertain as to what is required by this interrogatory. If the first clause was intended to be read as "the total number of applicants for admission and students admitted to the law school class of 1974 who are "[residents of Washington]" we do not have sufficient information from which to determine the domicile of each applicant or admitted applicant. However, based upon the assumption that the state of permanent mailing address is the state of "residence," the answers are 739 applicants,

and as column (e) in Schedule A indicates, 148 admitted students, are residents of Washington.

If the first clause was intended to be read "the total number of applicants for admission and students admitted to the law school class of 1974 who are [neither], and whose parents are [neither], residents, nor taxpayers [,] of the state of Washington," and if the state of permanent mailing address is assumed to be the state of "residence," then the answers to the first clause are 862 applicants, and as column (e) in Schedule A indicates, 127 admitted sudents are not residents of Washington.

With respect to the residence of the parents, while the Law School application form asks for the address of the applicant's parents, we have little occasion to verify such addresses (we do mail certain notices to applicants' permanent mailing addresses) and such addresses are often omitted from applications. Moreover, it is not clear where the residence of the parents would be relevant except where the parents of a non-resident (defined as above) admitted applicant reside in Washington. Nevertheless, examination of the applications of the 127 non-resident admitted applicants showed 5 had at least one parent who was a resident of Washington.

We have no information, apart from the state of assumed residence, from which we could make a judgment as to which applicants, admitted students, or parents are "taxpayers of the state of Washington."

3. The total number of law school applicants for the law school class of 1974; and the number of applicants admitted to the law school class of 1974.

ANSWER: The Law School received 1,688 applications from individuals for positions in the Law School class of 1974, of which only 1,601 were eventually supported by required supplementary documents (recommendations, transcripts, LSAT scores, etc.) and considered by the Committee on Admissions and Readmissions. As of September 9, 1971, the number of applicants admitted to the Law School class of 1974 is 293.

4. The relative position on the admissions or waiting list, grade point average, law school admission test score (the average score used in consideration for admission), writing score (average) and predicted first year law school grades for the plaintiff Marco DeFunis, Jr.

ANSWER: Plaintiff Marco De Funis, Jr. was denied admission to the Law School by letter dated August 2, 1971 (from Associate Dean Robert S. Hunt to Mr. De Funis) which reflected action taken by the Committee on Admissions and Readmissions on July 21, 1971. Therefore, Mr. De Funis as of September 9, 1971 has no position on either the "admissions or waiting list." However, Mr. De Funis was placed in the lowest quartile of the Law School's waiting list for the class entering fall 1971 on May 12, 1971 and remained there until the Committee's action on July 21, 1971.

Our records indicate that Mr. De Funis had a 3.71 combined junior-senior grade point average, an average Law School Admission Test score of 582 (representing the average of 512, 566, 668), an average Writing score of 61.3 (representing the average of 62, 58, and 64), and a predicted first year average of 76.23.

5. The names, position and addresses of all members of

the faculty, students, employees and officers of the University of Washington who are members of the Law School Admissions Committee or who have a voice or some role in selecting for or rejecting from and enrolling students into the University of Washington Law School, class of 1974.

ANSWER: As of September 9, 1971, the following are members of the Committee on Admissions and Readmissions of the Law School:

1. Richard O. Kummert, Professor of Law, Chairman of the Committee
   Address: 7733 - 29th Avenue N.E.
   Seattle, Washington 98105
2. William R. Andersen, Professor of Law
   Address: 7216 - 57th Avenue N.E.
   Seattle, Washington 98115
3. Geoffrey L. Crooks, Assistant Professor of Law
   Address: 2425 - 43rd Avenue West
   Seattle, Washington 98199
4. Robert L. Fletcher, Professor of Law
   Address: 5319 N.E. 43rd Street
   Seattle, Washington 98105
5. Robert S. Hunt, Associate Dean, Professor of Law
   Address: 1415 - 38th Avenue
   Seattle, Washington 98122
6. Gerald D. Joshua, Second Year Law Student
   Address: 1315 East Spring Street
   Seattle, Washington 98101
7. Rochelle Kleinberg, Third Year Law Student
   Address: 727 - 17th Avenue East
   Seattle, Washington 98102
8. Virginia B. Lynes, Assistant Professor of Law
   Address: 1856 East Shelby
   Seattle, Washington 98102
9. Tama Zorn, Second Year Law Student
   Address: 1719 - 26th Avenue East
   Seattle, Washington 98102

As of May 12, 1971, the date on which the Committee on Admissions and Readmissions placed Mr. De Funis on the waiting list for the class entering fall, 1971, the members of the Committee were Professors Kummert, Andersen, Crooks and Fletcher, Dean Hunt, Rochelle Kleinberg, and Vincent A. Hayes, 3849-156th Avenue S. E., Bellevue, Washington 98004, a first year law student.

As of July 21, 1971, the date on which the Committee denied admission to Mr. De Funis, the members of the Committee were Professors Kummert, Andersen, Crooks, Fletcher and Lyness, Dean Hunt, Rochelle Kleinberg and Tama Zorn.

With respect to individuals "who have a voice or some role in selecting for or rejecting from and enrolling students into the University of Washington Law School, class of 1974," the entire faculty of the School of Law has "a voice or some role" in the sense that general admission standards and policies result from faculty action and that the faculty elect the members of the Committee on Committees, which is responsible, along with Dean Roddis of the School of Law, for the selection of faculty members of the Committee. Also, a number of administrative and clerical personnel at the University of Washington have "some role" in the sense that these individuals collect and process the various documents, records, letters and papers that are connected with the decision to admit or reject particular applicants to the School of Law.

6. A detailed statement setting forth in full, reasons for the denying the plaintiff Marco DeFunis, Jr. admission to the law school class of 1974.

ANSWER: The Committee on Admissions and Read-

missions ("the Committee") decided in early October 1970 upon the following general procedures for the review of applications for the Law School class entering in fall of 1971:

a. The Committee would review applications of the most promising applicants each time 25 to 30 of such applications were finished processing and ready for review. Each of such files would be assigned to a Committee member for thorough review and for presentation of the file to the Committee. On the basis of last year's applicant group, the Committee decided that most promising applicants would be defined as applicants with predicted first year law school averages over 77.

b. The Chairman would review all applications of candidates with predicted first year averages below 74.5, except for minority and military (defined below) applicants, and would either (a) reject such applicants or (b) place such applicants in with a group for later review by the Committee. The decision as to which category such an applicant fell depended on whether in the Chairman's judgment there was information in the applicant's file indicating that the applicant had significantly better potential for law study than the relatively low predicted first year average tended to indicate. Cases of doubt were to be resolved in favor of deferring judgment until Committee review could be undertaken.

c. Applicants with predicted first year averages between 74.5 and 76.99 were to be accumulated until the great majority of applications filed were complete and ready for review, so that the critical decisions as to the margin of the incoming class could be made with a reltively complete view of remaining qualified applicants.

Under these operating procedures, Mr. De Funis' application, presenting a 76.23 predicted first year average, was placed in the third category and was not reviewed until the Committee undertook its major review of applications in a series of meetings in May, 1971.

Prior to these May meetings, the Committee met on February 24, 1971, March 29, 1971 and April 12, 1971 to review applicants with predicted first year averages over 77, military applicants (*i.e.*, applicants who had previously been accepted by the Law School, who had been unable to attend because of induction into military or alternative service, who had been honorably discharged, and who reapplied to the Law School for admission in the first fall following separation from service, or students who had begun attendance at the law school but who were forced to withdraw before first year examinations because of induction into military service), and outstanding minority applicants. During these meetings, the Committee admitted 78 applicants with predicted first year averages over 77, 19 military applicants, and 4 minority applicants. At the same time, the Committee deferred action on 7 applicants with predicted first year averages over 77 feeling that such applicants were not as promising as their predicted first year averages seemed to indicate.

In preparation for the major review of applications in mid-May, each Committee member was assigned approximately 75 files of individuals not qualifying for minority group status or military status with predicted first year averages ranging from 74.5 on up to in some cases 79 (the applications in such group with predicted first year averages over 77 having been completed and made ready for review subsequent to the meeting of April 12, 1971). Each

Committee member was asked to review these files and to rank them with a view to recommending to the Committee approximately 10 of the applicants for admission, recommending approximately 25 of the applicants for a position on a waiting list, and recommending that the remainder of the applicants be denied. Each of the members of the Committee complied with this request and appeared at a meeting of the Committee held on May 10, 1971 with such selections having been made from among the files assigned. The Committee then determined that, as an overall check upon the process, all files would be presented to the Committee in order of their predicted first year average, irrespective of the recommendations of the Committee member reviewing the file. It was felt that this procedure would result in the fairest comparisons that could be made between prospective candidates, while at the same time offering encouragement to the Committee member reviewing the file to offer complete justification as to why his recommendation regarding the applicant might have been different than the applicant's relative ranking based only on the predicted first year average would suggest. As a result of this process, on May 12, 1971 the Committee after having considered at meetings on May 10, May 11, and May 12 to that point 168 applications with predicted first year averages higher than Mr. De Funis' average, which number included a number of applications with predicted averages quite close to the predicted first year average of Mr. De Funis, reviewed the application of Mr. De Funis and placed him in the lowest quartile of its waiting list. The Committee's meetings concerning this group of files continued on May 13, 14 and 17 during which time the Committee reviewed files in order of predicted first year average down through the lowest ranked applicant on such

scale recommended by a Committee member for a waiting list position.

On June 15, 1971, the Committee met to review applications completed since its May meetings, to review minority applicants on the waiting list and to reconsider Mr. De Funis' position on the waiting list at the request of Mr. De Funis and his counsel and in view of a letter from his doctor concerning his condition at the time of his first LSAT test. It determined that his waiting-list position should remain unchanged.

Finally, on July 21, 1971, the Committee met to accept, and did accept 25 applicants from the first quartile of the waiting list and to determine which applicants ought to be continued on the waiting list in view of possible vacancies that might occur between that date and the beginning of school. It determined that it would have no occasion to admit applicants from the lowest two quartiles on the waiting list. Thus, the Committee on that date denied admission to Mr. De Funis and the other individuals previously in the third and fourth quartiles of the waiting list.

The Committee's reasons for denying Mr. De Funis are that it found no reason to adjust his ranking in the applicant population as indicated by the predicted first year average and that on this basis Mr. De Funis' application was below the group we accepted without special attributes being present. The latter point perhaps is made clearer by the following table of applications received and applications accepted for various levels of predicted first year averages:

Predicted First Year Average	Number of Applications Received	Number of Applications Accepted (to August 31, 1971)
81	1	1
80	2	2
79	11	11
78	42	42
77	105	93
76	169	53
75	210	22

The percentage of applications received that were accepted by the Committee drops sharply when predicted average is below 77. Indeed, it is noteworthy how the 53 people accepted with predicted first year average of 76 are distributed throughout the group of applicants with such predicted averages:

76.90 - 76.99	17	11
76.80 - 76.89	12	6
76.70 - 76.79	16	9
76.60 - 76.69	16	7
76.50 - 76.59	16	5
76.40 - 76.49	16	8
76.30 - 76.39	34	3
76.20 - 76.29	9	2
76.10 - 76.19	15	1
76.00 - 76.09	19	1

These data indicate that the Committee accepted few applicants with predicted first year averages reasonably close to that of Mr. DeFunis (76.23).

In selecting the applicants that it did accept in this narrow range, the Committee used the process described in its "Guide For Applicants," a copy of which Mr. De Funis received with his 1971 application:

> In assessing applications, we began by trying to identify applicants who had the potential for outstanding performance in law school. We attempted to select applicants for admission from that group on the basis

of their ability to make significant contributions to law school classes and to the community at large.

We gauged the potential for outstanding performance in law school not only from the existence of high test scores and grade point averages, but also from careful analysis of recommendations, the quality of work in difficult analytical seminars, courses, and writing programs, the academic standards of the school attended by the applicant, the applicant's graduate work (if any), and the nature of the applicant's employment (if any), since graduation.

An applicant's ability to make significant contributions to law school classes and the community at large was assessed from such factors as his extracurricular and community activities, employment, and general background.

In making the judgments thus required, the Committee sought those outstanding characteristics or qualifications not possessed by most of the other applicants with reasonably comparable predicted first year averages. For example, in determing the possible impact that the quality of an applicant's undergraduate school might have upon his apparent ranking based on predicted first year averages, the Committee's basis of comparison was the quality of the University of Washington, the Law School's primary source of applicants. In assessing the possible impact that an unusually demanding curriculum might have on an applicant's apparent ranking, the Committee's base for comparison was the demands imposed on a social science major at the University of Washington (about two-thirds of the Law School's recent classes have been social science majors). In assessing the possible impact that unusually heavy time commitments to employment or extracurricular activities might have upon a candidate's apparent ranking, the Committee's base for comparison was the amount of time

typically expended by most qualified applicants in such activities. On all of these points, the Committee found no reason to adjust Mr. De Funis' apparent ranking because he seemed on each of them typical of applicants with reasonably comparable predicted first year averages.

The Committee specifically considered Mr. De Funis' graduate study and made no adjustment because of it. Many applicants who have been out of undergraduate school for some period report some quantum of part-time graduate study. The Committee seldom makes an adjustment in predicted first year average ranking for such work on several grounds: (1) such work, particularly in the early part of Masters' degree programs, tends to retrace upper division undergraduate work for the benefit of students new to the graduate school; (2) grades on such work tend to be confined to A's and B's rather than distributed over the broader range of undergraduate grades; and (3) where the work is part-time, we are uncertain as to the effective time demands on the student and thus can not easily compare the grades with those of a full-time student.

A final matter the Committee considered in connection with Mr. De Funis' application was possible adjustment of his LSAT score component in the predicted first year average formula because of his alleged illnesses on each of the first two takings of the test. The Committee receives from innumerable applicants statements as to why their LSAT score is not a fair measure of their abilities and many include statements alleging medical infirmities at the time of the test. The Committee has tended to discount most such statements, except for those demonstrating relatively severe symptoms fully verified by a physician, on the grounds that (1) while minor infirmities are likely to be spread throughout the entire group taking the LSAT test,

we are not likely to hear from high LSAT score applicants about such infirmities, and (2) we have no way to verify the degree of infirmity in most cases. On the basis of the evidence Mr. De Funis presented to the Committee, it did not adjust his LSAT score component.

Schedule A

To Accompany Defendants' Answers
to Interrogatories Propounded by Plaintiffs

I. Candidates Admitted to the Law School Class of 1974 as of August 1, 1971.

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.83	613	67.5	77.44			Yes
3.86	753	73	80.01			Yes
2.96	711	61	75.67			Yes
2.73	648.5	69.5	74.27			Yes
3.83	596	60	76.83	Yes		Yes
3.72	638	60	77.11			Yes
3.37	668	59	76.32			Yes
3.30	728	71	77.59			Yes
3.20	631	55	74.97			Yes
3.30	675	66	76.51			Yes
3.90	638	68	78.09			Yes
4.00	667	56	78.36	Yes		Yes
3.20	728	65	76.96			Yes
3.82	566	64	76.49			Yes
3.54	632	55	76.16			Yes
3.41	681	64	76.90			Yes
3.39	665	63	76.52			Yes
2.63	642	66	73.67			Yes
3.08	686	61	75.69			Yes
2.04	476	46	68.05		Yes	Yes
3.38	708	74	77.68	Yes		Yes
4.00	585	63	77.38			Yes
3.46	644	65	76.52			Yes
3.47	595	64	75.74	Yes		Yes
3.88	527	70	76.35			Yes
3.82	626	67	77.58			Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
2.98	619	63	74.37			Yes
3.34	570	57	74.57			Yes
3.25	663	64	76.05			Yes
3.17	747	64	77.12			Yes
3.78	610	56	76.69			Yes
3.41	747	47	77.17			Yes
2.72	525	56	71.65		Yes	Yes
3.34	501	60	73.62			Yes
3.13	734	62	76.68	Yes		Yes
3.51	708	67	77.82			Yes
3.28	638	68	75.94			Yes
4.00	577	59	77.06	Yes		Yes
3.62	613	69	76.78	Yes		Yes
3.86	501	60	75.47		Yes	Yes
3.45	645	63	76.42			Yes
3.74	644	67	77.60			Yes
3.03	736	71.5	76.79			Yes
3.88	572	70	77.06			Yes
3.13	381.5	37.5	69.96		Yes	Yes
3.36	662	68	76.61	Yes		Yes
3.29	625	72	75.95			Yes
3.43	707.5	61.5	77.27	Yes		Yes
3.98	610	64	77.75			Yes
3.78	700	66	78.58			Yes
3.49	646	66	76.70			Yes
3.86	662	66	78.24			Yes
3.35	606	63	75.45			Yes
3.00	512	46	71.97		Yes	Yes
3.46	656	64	76.67	Yes		Yes
3.00	427	34	70.08		Yes	Yes
3.32	699	68	77.05	Yes		Yes
3.33	625	58	75.45			Yes
3.08	523	45	72.37		Yes	Yes
3.17	682	60	75.90			Yes
3.58	662	64	77.19	Yes		Yes
3.59	674	64	77.42			Yes
3.95	694	63	78.93	Yes		Yes
3.75	717	63	78.60			Yes
3.61	669	69	77.64		Yes	Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.50	695	70	77.70			Yes
3.81	630	64	77.48			Yes
3.37	676	61	76.54			Yes
3.67	700	54	77.64			Yes
3.01	614	58	74.17			Yes
3.43	566	63	75.09			Yes
3.82	544	58.5	75.90			Yes
3.64	705	64	78.08			Yes
3.64	681	58	77.42			Yes
3.68	606	65	76.69	Yes		Yes
3.64	579	52	75.53			Yes
3.40	767	69	78.47			Yes
3.27	576.5	60.5	74.62	Yes		Yes
3.36	695	66	77.04	Yes		Yes
3.25	541	57	73.80			Yes
3.89	746	62	79.51			Yes
2.85	705	66	75.42			Yes
3.82	610	74	77.64			Yes
3.66	637	59	76.84	Yes		Yes
3.32	759	60	77.65			Yes
3.70	609	69	76.99			Yes
2.81	616	47	73.00	Yes		Yes
3.82	598	62	76.91			Yes
3.43	657	71	76.91			Yes
3.58	381	39	71.58		Yes	Yes
3.43	662	58	76.39			Yes
3.44	734	59	77.61	Yes		Yes
3.79	482	41	74.00		Yes	Yes
3.55	770	99	79.03			Yes
3.70	727	69	78.87			Yes
2.63	481	55	70.60	Yes	Yes	Yes
2.32	456	57	69.21		Yes	Yes
3.73	590	75	77.06			Yes
3.83	592	60	76.76			Yes
3.51	632	70	76.74			Yes
3.40	632	71	76.41	Yes	Yes	Yes
3.47	695	63	77.28	Yes		Yes
4.00	505	56	75.78			Yes
3.31	453	48	72.19		Yes	Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.18	660	62	75.67	Yes		Yes
3.76	695	56	77.97			Yes
2.90	517	48	71.79		Yes	Yes
3.53	573	68	75.78		Yes	Yes
2.06	539	52	69.40		Yes	Yes
3.67	676	71	78.04			Yes
3.16	759	60	77.09	Yes		Yes
2.37	475	24	67.71		Yes	Yes
3.70	650	60	77.24			Yes
3.71	626	71	77.38	Yes	Yes	Yes
4.00	637	71	78.57			Yes
3.41	724	66	77.67	Yes		Yes
3.75	608	70	77.19			Yes
2.82	319.5	37	67.87		Yes	Yes
na	667	54	na			Yes
3.46	585	62	75.45			Yes
3.91	571	58	76.61			Yes
3.40	699	67	77.29	Yes		Yes
2.75	717	67	75.32			Yes
3.67	681	55	77.39			Yes
3.21	671	59	75.81			Yes
3.32	602	50	74.69	Yes		Yes
2.96	527	55	72.48		Yes	Yes
3.92	611	62	77.46	Yes		Yes
3.61	682	62	77.52			Yes
3.57	735	60	78.14	Yes		Yes
3.45	742	73	78.42	Yes		Yes
3.90	662	61	78.16	Yes		Yes
3.95	711	73	79.66	Yes		Yes
3.76	638	68	77.61	Yes		Yes
3.77	694	62	78.26	Yes		Yes
3.75	608	66	77.01			Yes
3.60	637	68	77.04	Yes		Yes
3.78	620	70	77.49	Yes		Yes
3.75	646	60	77.34			Yes
3.73	604	67	76.92			Yes
3.67	625	74	77.36			Yes
3.83	644	68	77.95	Yes		Yes
3.86	651	62	77.89	Yes		Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.80	729	71	79.34	Yes		Yes
2.66	588	62	72.72			Yes
3.86	661	65	78.18	Yes		Yes
2.68	672	74	74.66	Yes		Yes
3.59	735	63	78.34			Yes
3.47	758	66	78.42	Yes		Yes
3.60	708	62	77.90			Yes
3.75	684	49	77.44	Yes		Yes
3.22	427	41.5	71.19	Yes	Yes	Yes
3.29	734	65	77.36	Yes		Yes
3.71	645	61	77.23	Yes		Yes
3.67	670	64	77.62	Yes	Yes	Yes
3.57	742	71	78.75	Yes	Yes	Yes
3.94	687	58	78.55			Yes
3.36	651	76	76.80	Yes		Yes
3.85	608	59	77.05	Yes		Yes
3.62	715	64	78.17			Yes
na	734	73	na	Yes		Yes
3.93	717	58	79.00	Yes		Yes
3.50	705	56	77.22	Yes		Yes
3.65	674	63	77.57	Yes		Yes
3.72	760	64	79.23	Yes		Yes
2.92	622.5	76	74.82	Yes	Yes	Yes
3.12	426	27	70.14		Yes	Yes
3.60	632	64	76.78	Yes		Yes
3.68	584	67	76.44	Yes		Yes
3.09	746	74	77.27	Yes		Yes
4.00	663	68	78.84			Yes
3.60	663	68	77.45			Yes
3.44	753	71	78.46	Yes		Yes
3.43	720	59	77.35	Yes		Yes
2.89	663	58	74.52	Yes	Yes	Yes
3.70	631	76	77.66	Yes		Yes
3.07	741	71	76.99	Yes		Yes
3.62	668	80	78.15	Yes		Yes
3.44	660	60	76.48			Yes
3.90	671	72.5	78.85			Yes
3.33	650	70	76.40			Yes
3.84	687	76	79.03			Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.83	562	71	76.79	Yes		Yes
3.75	612	59	76.75	Yes		Yes
3.42	701	74	77.60			Yes
3.62	637	65	76.97	Yes		Yes
3.71	624.5	68.5	77.28	Yes		Yes
3.95	608	66	77.71	Yes		Yes
3.54	688	71	77.78	Yes		Yes
4.00	730	74	80.18			Yes
3.36	735	62	77.50	Yes		Yes
3.68	611	71	77.04	Yes		Yes
3.21	695	61	76.29	Yes		Yes
3.45	590	44	74.68		Yes	Yes
3.38	753	62	77.85	Yes		Yes
3.66	662	58	77.19			Yes
3.73	721	55	78.23			Yes
3.91	657	64	78.26	Yes		Yes
3.79	620	58	76.97	Yes		Yes
3.40	594	68	75.66	Yes		Yes
3.21	735	68	77.24	Yes		Yes
3.60	644	64	76.97	Yes		Yes
2.67	469	48	70.23		Yes	Yes
3.63	683	66	77.78	Yes		Yes
3.86	688	63	78.52			Yes
3.39	432	41	71.82		Yes	Yes
3.77	605.5	67	77.09	Yes		Yes
3.71	687	62	77.94	Yes		Yes
3.47	693	68	77.47	Yes		Yes
3.85	636	62	77.62			Yes
4.00	800	71	81.16	Yes		Yes
3.64	630	67	77.03	Yes		Yes
3.23	783	72	78.25			Yes
3.76	637	58	77.14			Yes
3.83	608	56	76.83			Yes
3.44	711	62	77.38			Yes
2.53	618	61	72.70	Yes	Yes	Yes
3.71	657	54	77.56	Yes		Yes
3.60	662	63	77.21	Yes		Yes
3.75	615.5	64.5	77.06			Yes
3.59	687	68	77.80	Yes		Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
2.37	611	50	71.53	Yes	Yes	Yes
3.28	638	62	75.67	Yes	Yes	Yes
3.85	699	64	78.71			Yes
3.11	583	48	73.57	Yes	Yes	Yes
4.00	709	74	79.84	Yes		Yes
3.96	728	72	79.92	Yes		Yes
2.11	603	55	70.73	Yes	Yes	Yes
3.68	720	57	78.14	Yes		Yes
3.75	645	55	77.10			Yes
3.69	657	65	77.53			Yes
3.88	644	62	77.85			Yes
3.28	541	52	73.67		Yes	Yes
3.83	614	63	77.24	Yes		Yes
3.69	650	62	77.29			Yes
3.14	791	73	78.12	Yes		Yes
3.23	683	63	76.25	Yes		Yes
3.43	435.5	38	71.87	Yes	Yes	Yes
3.33	765	68	78.13	Yes		Yes
3.48	637	67.5	76.72	Yes		Yes
3.23	681	67	76.41	Yes		Yes
3.54	576	62	75.59	Yes		Yes
3.62	625	66	76.83	Yes		Yes
3.82	643	49	76.98			Yes
3.48	624	66	76.56	Yes		Yes
3.77	665.5	67.5	78.09	Yes		Yes
3.80	649	71	78.07	Yes		Yes
3.47	693	63	77.25	Yes		Yes
2.69	689	49	73.84	Yes	Yes	Yes
3.76	715	74	79.11	Yes		Yes
3.87	620	75	78.03	Yes		Yes
3.24	729	71	77.39	Yes		Yes
3.76	687	68	78.39			Yes
3.49	693	66	77.46	Yes		Yes
3.33	737	68	77.69			Yes
3.10	689	75	76.45	Yes		Yes
3.92	699	67	79.09			Yes
3.40	687	71	77.28	Yes		Yes
3.84	620	65	77.46			Yes
3.82	630	67	77.65	Yes		Yes

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.84	663	72	78.46			Yes
3.81	707	60	78.52			Yes
2.29	529	60	70.41		Yes	Yes
3.89	683	68	78.78			Yes
3.52	521	60	74.55		Yes	Yes
3.37	701	68	77.26	Yes		Yes
3.47	544	54	74.48	Yes		Yes
3.64	702	71	78.35	Yes		Yes
3.64	650	52	76.66	Yes		Yes
3.36	701	59	76.82			Yes
3.91	584	62	77.01	Yes	Yes	Yes
3.89	674	58	78.18	Yes		Yes

II. Candidates Admitted to the Law School Class of 1974 as of August 31, 1971, who were not on the Waiting List as of August 1, 1971.

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.21	392	28	69.97	Yes	Yes	Yes
2.30	385	38	67.14	Yes	Yes	Yes
2.12	437	40.5	67.49		Yes	Yes

III. Candidates on the Waiting List for the Law School Class of 1974 as of August 1, 1971.

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.25	722	68	77.18			
3.16	717	64	76.60	Yes		
3.69	546.5	51	75.14			
3.62	668	60	77.24			
3.40	620	74	76.36	Yes		
3.34	687	55	76.34	Yes		
3.63	638	58	76.69			
3.45	657	65	76.70			
3.96	572	60	76.89			

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.25	604	67	75.25	Yes		
3.80	626	68	77.56	Yes		
3.41	636	64	76.18			
3.33	637	64	75.92			
3.72	629	49	76.46			
3.33	637	60	75.74			
3.77	613	62	77.00	Yes		
3.48	644	59	76.32			
2.98	662	59	74.88	Yes		
3.90	599	46	76.47			
3.36	626	66	75.96	Yes		
3.34	657.5	76.5	76.85	Yes		
3.20	681	67	76.31			
3.56	625	64	76.53			
3.17	708	69	76.72	Yes		
3.09	711	60	76.08			
3.42	632	62	76.06	Yes		
3.02	727	60	76.09	Yes		
2.95	741	70	76.52	Yes		
3.43	585.5	59	75.22			
3.61	602	58	76.06			
2.51	746	65	74.84	Yes		
3.11	699	71	76.46	Yes		
3.61	707	61	77.87			
3.06	669	63	75.43	Yes		
3.66	604	58	76.26			
3.55	610	62	76.17			
3.70	592	60.5	76.33			
3.42	626	70	76.32			
3.67	632	55	76.61	Yes		
3.93	535	52	75.84			
3.31	679	56	76.15			
3.64	612	58	76.33	Yes		
3.11	688	67	76.11			
3.58	626	59	76.38	Yes		
3.39	662	55	76.37	Yes		
3.38	687	59	76.66			
3.87	560	65	76.61			
3.54	623	64.5	76.45	Yes		

(a) Combined Jr.-Sr. GPA	(b) LSAT Figure	(c) Writing Figure	(d) Predicted First Year Average	(e) Non-Resident	(f) Minority Group Member	(g) Admitted As of August 30, 1971
3.84	595.5	58.5	76.81			
3.60	626	62	76.59			
3.71	637	58	76.96			
3.93	523	63	76.15			
3.72	650	51	76.91	Yes		
3.55	625	61	76.36	Yes		
3.64	650	52	76.66			

F. FINDINGS OF FACT AND CONCLUSIONS OF LAW (R. 8)

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

(Title Omitted)

I.

That the plaintiffs Marco DeFunis, Sr. and Betty DeFunis, his wife, are husband and wife, parents of the plaintiff Marco DeFunis, Jr., and are taxpayers and are and have been residents of Seattle, King County, Washington, for approximately fifty years.

II.

That the plaintiffs Marco DeFunis, Jr. and Lucia DeFunis, his wife, are husband and wife, were born in Seattle, and are taxpayers and are and have been residents of King County, Washington, for more than 22 years and are now residents of the city of Bellevue, Washington.

III.

That the plaintiff Marco DeFunis, Jr. is 22 years of age, a graduate of the public elementary schools and of Franklin High School in Seattle, Washington, and was graduated from the University of Washington in June, 1970, with a Bachelor of Arts degree.

IV.

That the plaintiff Marco DeFunis, Jr. graduated from the University of Washington with an overall grade average of 3.62 out of a possible 4.00; a junior-senior year grade point average of 3.71, as calculated by the law school, or 3.8 when you include 9 hours of straight A he received in latin during the first quarter of his junior year in the summer of 1968.

V.

That the plaintiff Marco DeFunis, Jr. was graduated from the University of Washington in June, 1970, Phi Beta Kappa and magna cum laude.

VI.

That Marco DeFunis, Jr. worked part time 20 to 40 hours per week during the school year and at the same time taught Sunday school on weekends.

VII.

The defendants are the University of Washington, an agency of the state of Washington, and the defendant Charles Odegaard is president of the University of Washington. The defendants Harold S. Shefelman, James R. Ellis, R. Mort Frayn, Robert I. Tennaugh, Jack G. Newpert, Robert F. Philip and George V. Powell, comprise all of the regents of the University of Washington.

VIII.

That Richard S. L. Roddis is the Dean of the University of Washington School of Law. Richard O. Kummert, Robert S. Hunt, William R. Anderson, Robert L. Fletcher, Geoffrey L. Crooks and Virginia Lyness are professors of law and members of the Admissions Committee of the

University of Washington School of Law. Rochelle Kleinberg, at the times material hereto, was a second year law student, and that Tama Zorn and Vincent Hayes, at the times material hereto, were first year law students, and all three were members of the Admission Committee of the University of Washington School of Law.

IX.

The Board of Regents of the University of Washington has delegated through the president to the faculty of the School of Law the power to determine the processes and policies governing admission to the School of Law. Pursuant to this delegation of authority, the faculty has designated an Admissions Committee to determine who shall be admitted to the School of Law. During all times pertinent hereto the Admissions Committee was composed of five faculty members and two students. Faculty members are selected by the Dean and the Committee on Committees, the latter committee being elected by the full faculty. Student members are selected by the Student Bar Association, which is comprised of all the enrolled students in the School of Law.

X.

The University of Washington School of Law received 1601 completed applications for admission to the class beginning September, 1971. Under the University's enrollment limitation there were 445 positions allotted to the School of Law, and of these the number available for the first year class was between 145 and 150 students. Each applicant had earned a baccalaureate degree, had taken the Law School Admission Test, and had completed the application process which included procuring letters of

recommendation from a college faculty member and a college dean, as well as, at his option, submitting a personal statement identifying elements in his background and experience that he felt were relevant in considering his application.

XI.

That the plaintiff Marco DeFunis, Jr. applied for admission to the University of Washington School of Law class of 1973, commencing in the fall of 1970, after graduating from the University of Washington in the spring of 1970. He was not accepted, but was placed on the class admissions waiting list and after waiting until late summer of 1970 was finally denied admission to the Law School for the fall term beginning 1970. At that time said plaintiff was advised he might have a better chance of attending Law School with the class entering in the fall of 1971.

XII.

Thereafter, during the academic year 1970-71, the plaintiff Marco DeFunis, Jr. attended graduate school and took 24 hours of graduate school courses, in which, at the time of his application, he had received 21 hours of A and 3 hours of incomplete, while working 36 or more hours per week for the Seattle Park Department.

XIII.

That the plaintiff, Marco DeFunis, Jr., for a second time applied to the University of Washington School of Law for admission in the fall of 1971. Said plaintiff's admissions creditials included, in addition to the high scholastic records achieved as an undergraduate, and his one-year graduate school record as set forth above, Law School Aptitude Test scores of 512 (August, 1969), 566 (Novem-

ber, 1969), and 668 (December, 1970). The score of 668 is within the top 7% of all law school applicants in the nation who have taken the test in the last three years.

XIV.

That the plaintiff Marco DeFunis, Jr. had a Predicted First Year Average, as determined by the Law School for comparison with other candidates of 76.23 and that said plaintiff's Predicted First Year Average was calculated by using a formula combining the said plaintiff's junior-senior year grade point average of 3.71 average L.S.A.T. score of 582 (512 + 566 + 668, divided by three) and average writing test score component of 61 (62 + 58 + 64 divided by three).

XV.

The plaintiff Marco DeFunis, Jr. was for a second time not accepted to the University of Washington Law School, but was placed on the class admission waiting list. He was notified of his final denial of Admission on August 2, 1971.

XVI.

The ultimate determination of applicants to whom admission was offered did not follow exactly the relative ranking of P.F.Y.A.'s. There were 29 applicants who had higher P.F.Y.A.'s than plaintiff's and whose applications were denied; there were 74 applicants (including 36 minority group applicants) who had lower P.F.Y.A.'s than plaintiff's and whose applications were granted. The actual number of said minority group students, excluding Asian-Americans, enrolling in the class was 18.

XVII.

The Admissions Committee sent letters of acceptance to over 200 applicants. Normal attrition among those in-

vited to attend would have reduced this group to produce a class of about 150. Against the possibility of unusually high attrition among the group of selected applicants, the Committee placed approximately 155 additional applicants on a waiting list. That list was ranked in quartiles, there being approximately 46 applicants in the first or highest quartile, 38 applicants in the second quartile, 36 applicants in the third quartile, and 33 applicants in the fourth, or lowest, quartile. The remaining applicants—those receiving neither offers of acceptance nor waiting list assignments—received letters of denial. Plaintiff received an invitation to be placed on the waiting list and he was ranked in the fourth or lowest quartile. On July 21, 1971, the rate of attrition from the admitted applicants appearing to be within normal ranges, the Committee decided to send letters of denial to those applicants in the third and fourth quartiles on the waiting list. Plaintiff was thus notified on August 2, 1971, that he would not be admitted to the School of Law class beginning September, 1971.

XVIII.

As of August 1, 1971, 275 students were finally admitted to the freshman Law School class and 55 students remained on the waiting list, making a total of 330 students. The plaintiff Marco DeFunis, Jr. was notified at that time that he was neither admitted nor any longer on the waiting list.

XIX.

Out of the 275 students admitted to the Law School, 127 were nonresidents of the state of Washington. Out of the total considered 330 students, 150 were nonresidents of the state of Washington and 180 were residents of the

state of Washington. Thirty-two non-residents or 21.6% of the entering class were enrolled in the first year law class.

XX.

Out of the 275 students admitted to Law School, 180 had a lower junior-senior year grade point average than the plaintiff Marco DeFunis, Jr., and 95 had a higher junior-senior year grade point average. Of the total 330 students considered, 224 had a lower junior-senior year grade point average than plaintiff Marco DeFunis, Jr., and 106 of the 300 had a better junior-senior year grade point average. (Using the Law Schools' calculation of the plaintiff Marco DeFunis, Jr.'s junior-senior year grade point average, and not including nine hours of A earned in his junior year.)

XXI.

That the total number of students admitted to the University of Washington School of Law, 44 of these students were "minority" students, i.e., who were Afro-American, Asian-American, Chicano or American-Indian. Of the total of these "minority" students admitted, 6 had qualifications higher than the plaintiff and 38 had qualifications lower than the plaintiff Marco DeFunis, Jr. (Based on the Law School's calculations.)

XXII.

That the Law School desired to achieve a greater "minority" representation among students enrolled therein. To accomplish this desire the Law School gave a preference to some races, including Afro-Americans, Chicanos and American-Indians. In doing so, the Admissions Committee assumed that all members of minority races, with the ex-

ception of Asian-Americans, were deprived persons. The applications of black students were separated from all others and assigned for review to a black student and a professor who worked closely with the CLEO program. The applications of other minority students, except Asian-Americans, were assigned to Professor Hunt. The CLEO program is set up specifically to aid minority and other culturally deprived students both financially and educationally in their admission to law schools and is supervised by law schools.

XXIII.

That some minority students were admitted to the University of Washington School of Law prior to and instead of the plaintiff Marco DeFunis, Jr., with college grades and aptitude test scores so low that had they been white their applications would have been summarily denied.

XXIV.

That since no more than 150 applicants were to be admitted to the University of Washington School of Law, the admission of less qualified students resulted in a denial of places to those better qualified.

XXV.

That the plaintiff Marco DeFunis, Jr. had better qualifications than many of the students admitted by the Law School Admissions Committee and the plaintiff Marco DeFunis, Jr. was and is fully qualified and capable of attending the University of Washington School of Law satisfactorily.

XXVI.

That there were some students who were admitted in previous years and then went into the Armed Services of

the United States, which students were admitted without further examination of credentials, although some of these credentials were lower than the plaintiff's.

XXVII.

That there is at least one place held for the plaintiff Marco DeFunis, Jr. under a temporary restraining order dated August 31, 1971, which order restrained the University of Washington from "admitting applicant students or transfer students to undergraduate law study in the law school of the University of Washington in a number which would preclude the admission of plaintiff, Marco DeFunis, Jr., to the 1971-72 first year class," . . . and said plaintiff has been and is now attending said Law School, subject to the final determination of his case herein.

From the foregoing Findings of Fact, the court now makes the following

CONCLUSIONS OF LAW

I.

That in denying the plaintiff Marco DeFunis, Jr. admission to the University of Washington School of Law, the University of Washington has discriminated against said plaintiff and has not accorded to him equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

II.

That there is no constitutional restriction upon admitting nonresidential students and no laws or regulations providing that preference shall be given to residential students over nonresidential students for admission to the University of Washington School of Law.

III.

That the plaintiff Marco DeFunis, Jr. should be admitted to the University of Washington School of Law for the class of 1974, beginning September 22, 1971, and that the defendants are ordered and directed to admit said plaintiff Marco DeFunis Jr. into the University of Washington School of Law.

IV.

That the defendants wrongfully denied the plaintiff Marco DeFunis, Jr. admission to the University of Washington School of Law.

V.

That the plaintiffs shall recover their costs and disbursements herein to be taxed.

Done in open court Oct. 18th, 1971.

LLOYD SHORETT

Judge

G. ORAL DECISION OF WASHINGTON SUPERIOR COURT FOR KING COUNTY (R. 538)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

(Title Omitted)

Before: The Honorable LLOYD SHORETT, Judge.

September 22, 1971
10:00 o'clock a.m.

APPEARANCES:

For the Plaintiffs: JOSEPH DIAMOND, ESQ. and CRAIG S. STERNBERG;

For the Defendants: JAMES B. WILSON, ESQ.

THE COURT: Counsel, we all know that this case is of

a type that will, and indeed should be, reviewed very quickly by the Supreme Court of the State and so I will just state my views and that Court will get a chance then to review what I have said and eventually decide the matter.

It seems to me that the law school here wished to achieve greater minority representation and in accomplishing this gave preference to the members of some races. In doing this the Admissions Committee assumed that all members of minority races, with the exception of Asians, were deprived persons. The applications of the black students were separated from all others and assigned for review to a black student and a professor who had worked closely with the CLEO program.

Some minority students were admitted whose college grades and aptitude test scores were so low that had they been whites their applications would have been summarily denied. Excluding the Asians only one minority student out of 31 admitted among the applicants had a predicted first year average above the plaintiff's.

Since no more than 150 applicants were to be admitted the admission of less qualified resulted in a denial of places to those otherwise qualified. The plaintiff and others in this group, have not in my opinion, been accorded the equal protection of the law guaranteed by the Fourteenth Amendment.

In 1954 the United States Supreme Court in *Brown v. The Board of Education* decided that public education must be equally available to all regardless of race.

After that decision the Fourteenth Amendment could no longer be stretched to accommodate the needs of any

race. Policies of discrimination will inevitably lead to reprisals. In my opinion the only safe rule is to treat all races alike and I feel that is what is required under the equal protection clause.

The other claims made by the plaintiff are, in my opinion, without merit.

Article Nine of our State Constitution requiring the State "To make ample provision for the education of all children residing within its borders . . ." obviously does not apply to graduate schools, *Litchman v. Shannon*, 90 Wn. 186.

There is no constitutional restriction upon admitting non-resident students. The record shows that 21.6 per cent of the entering class are non-residents. This is down from 30.9 per cent last year and perhaps due to the increase in non-residents fees. In the absence of a statutory provision or a University rule the Court cannot interfere with this determination regarding the admission of non-residents.

It should be recognized that many Washington students attend law schools in other states thus equalizing the load between the states. Students who were admitted in previous years and then drafted into the Armed Services were also admitted without further examination of credentials. This was no distinction based upon race and such regulation, it seems to me, is quite proper.

Some difficulty is encountered in determining the proper remedy to correct the discrimination. Only the plaintiff has brought an action. The other eligible applicants have not commenced timely suits against the University. I think in law they must be said to have rested on their rights and the principle of laches should prevent suits by them during

this ensuing academic year which suits would interfere greatly with the conduct of the law school.

Since the plaintiff has brought this action and has very acceptable credentials and since I find that there has been discrimination here involving 30 or so students admitted upon an entirely different system than that applied to this plaintiff, I think there should be a remedy for the wrong and the plaintiff will be admitted to the law school. The defendants are directed to allow him admission to the school in this year's class.

Gentlemen, I think that disposes of the issues. Are there any questions?

MR. DIAMOND: None, your Honor. Thank you.
MR. WILSON: None, your Honor.
THE COURT: We will be in recess.

(Whereupon, at 10:10 a.m. the Court recessed.)

H. JUDGMENT OF THE SUPERIOR COURT FOR KING COUNTY (R. 6)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MARCO DE FUNIS and BETTY DE FUNIS, his wife; and MARCO DE FUNIS, JR., and LUCIA DE FUNIS, his wife,

Plaintiffs,

v.

CHARLES ODEGAARD, President of the University of Washington; RICHARD L. RODDIS, Dean of the University of Washington Law School; RICHARD KUMMERT, ROBERT S. HUNT, and RICHARD L. RODDIS, Admissions Committee of University of Washington Law School; HAROLD S. SHEFELMAN, JAMES R. ELLIS, R. MORT FRAYN, ROBERT L. FLENNAUGH, JACK G. NEWPERT, ROBERT F. PHILIP and GEORGE V. POWELL, Regents of the University of Washington; and HAROLD GARDINER, Registrar of the University of Washington; and UNIVERSITY OF WASHINGTON,

Defendants.

No. 741727

JUDGMENT

THIS MATTER having come on regularly for hearing before the Honorable Lloyd Shorett, judge of the Superior Court of King County, sitting without a jury, the plaintiffs being represented by Josef Diamond and Craig S. Sternberg of Lycette, Diamond & Sylvester, and the defendants being represented by Slade Gorton, Attorney General, and James B. Wilson and John Lackland, Assistant Attorneys General for the State of Washington, and the court having heard the testimony of witnesses, having fully considered all of the evidence and records and files herein,

and having made and entered its Findings of Fact and Conclusions of Law, it is now, Therefore,

ORDERED, ADJUDGED AND DECREED that the defendants are directed to allow the plaintiff Marco DeFunis, Jr. admission to the University of Washington School of Law, class of 1974, as of September 22, 1971, and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiffs be and hereby are entitled to recover their costs and taxable disbursements herein.

DATED this 18th day of October, 1971.

LLOYD SHORETT, Judge

I. DECISION OF WASHINGTON SUPREME COURT (R. 586)

The decision of the Supreme Court of Washington (*DeFunis v. Odegaard*, 82 Wn.2d 11, 507 P.2d 1169) is printed as Appendix A, beginning at page A-1 of Petitioner's Jurisdictional Statement or in the Alternative Petition for Certiorari.

J. WASHINGTON SUPREME COURT ORDER DENYING PETITION FOR REHEARING (R. 664)

The order of the Supreme Court of Washington denying petitioner's petition for rehearing is printed as Appendix E, at page A-71, of Petitioner's Jurisdictional Statement or in the alternative Petition for Certiorari.

K. REMITTITUR OF WASHINGTON SUPREME COURT (R. 665)

IN THE SUPREME COURT OF WASHINGTON
(Title Omitted)

The State of Washington to: The Suprior Court of the State of Washington in and for King County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on March 8, 1973, became the final judgment of this court in the above entitled case on May 16, 1973. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows: Two thousand three hundred and two and 72/100 dollars ($2,302.72) in favor of appellants and against respondents.

The petition for rehearing was denied by order dated May 16, 1973.

cc: Honorable Slade Gorton
Mr. James B. Wilson
Lycette, Diamond & Sylvester
Mr. Josef Diamond
Mr. Lyle L. Iversen
Mr. Craig S. Sternberg
Report of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 16th day of May, A.D. 1973.

/s/ WILLIAM M. LOWRY
Clerk of the Supreme Court, State of Washington